TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]267

RAINIER BREWING COMPANY, PLAINTIFF IN ERROR,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED MARCH 14, 1922.

(26,177)

(28,177)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 820.

RAINIER BREWING COMPANY, PLAINTIFF IN ERROR,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 10, 1921.

No. 3520

United States
Circuit Court of Appeals
For the Ninth Circuit.

RAINIER BREWING COMPANY, a Corporation,
Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

Names and Addresses of Counsel.

S. J. WETTRICK, Esq., Attorney for Plaintiff in Error,

805 Arctic Building, Seattle, Washington.

Messrs. CAREY & KERR, Attorneys for Defendant in Error,

1410 Yeon Building, Portland, Oregon.

C. A. HART, Esq., Attorney for Defendant in Error,

1410 Yeon Building, Portland, Oregon.

[1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Complaint.

Now comes plaintiff and makes this its complaint against the defendant herein:

I.

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Oregon and engaged in the transportation of persons

*Page-number appearing at foot of page of original certified Transcript of Record.

and property as a common carrier and in that business operates and operated at the times hereinafter mentioned a line of steamships between San Francisco, California, and Flavel, Oregon. During said time plaintiff joined with carriers by rail between different states of the United States and filed and published tariffs and in other respects conformed to the interstate commerce law of the United States.

II.

Defendant is a corporation organized and existing under the laws of the State of Washington.

III.

On or about the 12th day of May, 1917, the defendant delivered to plaintiff at San Francisco, California, two carloads [2] of bottled beer with instructions to cause said shipments to be transported via its steamship line to Flavel, thence via the line of railway of the Spokane, Portland and Seattle Railway Company to Portland, and thence via the railway of the Northern Pacific Railway Company to Seattle and there to deliver said shipment to American Transfer Company for the purpose of distributing to the individual consignees of the beer included in said shipment. Said two carloads of beer were thereupon transported to Seattle by plaintiff and its connecting carriers by rail hereinabove referred to and were delivered by said Northern Pacific Railway Company to the individual consignee, whose name in each instance appeared upon each package of bottled beer included in said shipment.

IV.

Under and by virtue of the laws of the State of

Washington and of the United States relating to the importation of beer into the State of Washington, the said connecting carriers by rail of plaintiff upon receipt from plaintiff of the two carloads of beer were required to and did segregate said two carloads of beer into individual shipments, each shipment consisting of the package of beer marked and consigned to the individual consignee for whom it was intended; that thereupon said connecting carriers by rail of plaintiff in conformity to the requirements of law transported said two carloads of beer into the State of Washington and to the City of Seattle and there made delivery of said shipments as individual, less than carload shipments.

V.

That plaintiff and its connecting carriers by rail had theretofore duly published their certain tariffs and had filed the same with the Interstate Commerce Commission of the United States and had duly posted the same in all respects as required [3] by law, and that according to the said tariffs then and there in effect and uncanceled, the lowest freight rate applicable to the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, via the said route was the sum of forty-eight cents per hundred pounds minimum of seventy-six cents on each individual shipment, and the total charge which plaintiff and its connecting carriers by rail were required by said tariffs to collect for the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, was the sum of $2,041.54. Defend-

ant has actually paid on account of the charges for said transportation the sum of $425.57, and no more, and there is still due and owing from defendant the sum of $1,615.97, in order to complete the payment for said transportation required by the tariffs. Defendant at the time of making said shipment agreed to pay and undertook to pay all of the freight charges lawfully accruing for said transportation, but has paid no more than the sum of $425.57 on account thereof. No part of the balance due has been paid to plaintiff or to either of its connecting carriers by rail participating in said transportation.

VI.

Prior to the making of said shipment plaintiff had entered into an agreement with its connecting carriers by rail hereinabove named, by which it agreed to advance and pursuant to which it did advance to said connecting carriers by rail their respective charges for the portion of the transportation furnished by each of them, respectively, and by which each of said companies authorized plaintiff to collect from defendant the regular tariff charge for the entire transportation from San Francisco, California, to Seattle, Washington. Demand has been made by plaintiff on defendant for the payment of said balance and defendant has failed and refused and still fails and refuses to pay any part thereof, and the same is now due and owing [4] from defendant to plaintiff.

WHEREFORE, plaintiff prays for judgment against defendant for the sum of $1,615.97, with interest thereon from the time of the delivery of said

beer at Seattle, Washington, to wit, the 23d day of May, 1917, and with costs and its disbursements herein.

CAREY & KERR,
F. G. DORETY and
CHARLES A. HART,
Attorneys for Plaintiff. [5]

State of Oregon,
County of Multnomah,—ss.

I, W. Q. Davidson, being first duly sworn, depose and say that I am Secretary of Great Northern Pacific Steamship Company, plaintiff in the above-entitled action; that I have read the foregoing complaint, know the contents thereof, and that the same is true as I verily believe.

W. G. DAVIDSON.

Subscribed and sworn to before me this 31 day of July, 1917.

[Seal] M. BARGER,
Notary Public for Oregon.

My commission expires Oct. 5, 1920.

[Indorsed]: Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 3, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [6]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation, L. HEMRICH, President,

Defendant.

Answer and Counterclaim.

Now comes the defendant above named, and for answer to the complaint herein, says:

I.

That it admits the allegations contained in paragraph I thereof.

II.

That it admits the allegations contained in paragraph II thereof.

III.

That it admits the allegations contained in paragraph III thereof, except that delivery of the carloads of beer therein referred to was made as therein alleged, as to which defendant has no knowledge or information sufficient to form a belief, but alleges that, if delivery was so made, the same was done contrary to the provisions of the bill of lading under which said shipments moved.

IV.

Answering paragraph IV of said complaint, defendant denies each and every allegation therein contained, and alleges [7] that, if said carloads of beer were segregated and delivered as individual, less than carload shipments, as therein alleged, the same was done contrary to the provisions, requirements and agreements of the bill of lading under which said shipments were accepted for transportation and delivery and in misconception of the carriers' rights, duties and obligations in the matter.

V.

Answering paragraph V of said Complaint, defendant denies that the lowest freight rate applicable to the transportation of said two carloads of beer from San Francisco, California, to Seattle, Washington, via the said route, was the sum of 48 cents per hundred pounds with a minimum of 76 cents on each individual shipment, and that the total charge which plaintiff and its connecting carriers by rail were required by their tariffs to collect for said transportation was the sum of $2,041.54, or any other sum in excess of the sum of $425.57, which defendant paid upon the delivery of said shipments to plaintiff at San Francisco and which plaintiff then accepted as the total freight charges lawfully accruing on said shipments.

VI.

Answering paragraph VI of said complaint, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the allegations therein contained, and therefore denies the same.

Further answering and by way of an affirmative defense, this defendant alleges:

I.

That on the 8th day of May, 1917, and again on the 12 day of May, 1917, defendant delivered to plaintiff at San Francisco, [8] California, a carload of bottled beer to be transported over the steamship line of plaintiff to Flavel, Oregon, thence over the Spokane, Portland & Seattle Railway to Portland, Oregon, and thence over the Northern Pacific Railway to Seattle, Washington, as through carload shipments; that the two carloads of beer so delivered to plaintiff were duly accepted and a bill of lading issued for each one of them, and that plaintiff thereupon undertook and agreed on behalf of itself and its connecting carriers aforesaid to transport the said carloads of beer to Seattle, Washington, and there to deliver to the American Transfer Company as the consignee named in said bills of lading.

II.

That the tariffs of plaintiff and the said connecting carriers, duly published and on file with the Interstate Commerce Commission, provided different rates for beer transported in carload and less than carload quantities; that the carload rate so published were applicable to shipments over a certain minimum weight per car, and that each one of the shipments in question exceeded the said minimum and was therefore entitled to the carload rate; that the carload rate on bottled beer at the time the said shipments moved, duly published and filed by said carriers as aforesaid, from San Francisco,

California, to Seattle, Washington, was 30 cents per one hundred pounds; that defendant, upon the delivery of the said carloads to plaintiff, paid to plaintiff freight charges on said shipments on the basis of the said carload rate of 30 cents per one hundred pounds, aggregating with certain toll charges added thereto the sum of $425.57, and that in consideration thereof the said plaintiff, on its own behalf [9] and on behalf of the said connecting carriers, undertook and agreed to transport said two carloads of beer to Seattle, Washington, as prepaid shipments, and there deliver the same to the American Transfer Company, without any further charge whatsoever.

III.

That said shipments consisted of numerous individual cases or packages of bottled beer, each of which bore a permit as required by the laws of the State of Washington and none of which contained more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit, and that the shipment of said packages in the aggregate as carload lots was not in violation of the laws of the State of Washington or of the United States.

For further answer and defense to plaintiff's complaint and as a counterclaim against plaintiff, this defendant alleges:

I.

That plaintiff and said connecting carriers unreasonably and negligently delayed the transportation of said carloads of beer, which caused great dissatisfaction among defendant's customers to whom

said beer was to be distributed and made it necessary for defendant to send out numerous printed notices and circulars, telegrams and letters, and entailed considerable extra correspondence and office labor, and that the expense incurred and damages suffered by defendant on account thereof was the sum of $93.40.

WHEREFORE, defendant prays that the complaint of plaintiff be dismissed and that it take nothing by this action; and that defendant have and recover from plaintiff the sum of $93.40 and its reasonable costs and disbursements herein incurred.

S. J. WETTRICK,
Attorney for Defendant. [10]

State of Washington,
County of King,—ss.

Charles W. Loomis, being first duly sworn, upon his oath deposes and says: That he is the Secretary of defendant herein and makes this verification for and on behalf of said corporation, being thereunto duly authorized; that he has read the foregoing answer and cross-complaint, knows the contents thereof and believes the same to be true.

CHAS. W. LOOMIS.

Subscribed and sworn to before me this 15th day of September, 1917.

[Seal] S. J. WETTRICK
Notary Public in and for the State of Washington, Residing at Seattle.

[Indorsed]: Answer and Counterclaim. Filed in the U. S. District Court, Western Dist. of Washing-

ton, Northern Division. Sept. 18, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [11]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Reply.

Now comes plaintiff and makes this its reply to the answer and counterclaim of the defendant herein.

Plaintiff admits the making of the shipments of beer described in paragraph I of defendant's affirmative answer, and admits that said shipments were made as carload shipments; and defendant admits that the rate applicable to carload shipments was as stated in paragraph II of said affirmative answer. Defendant also admits that said shipments consisted of individual cases or packages of bottled beer, each of which bore a permit as required by the law of the State of Washington, and that none of said individual packages contained more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit; but plaintiff alleges that the shipments of such in-

dividual packages in the aggregate as carload lots was in violation of the laws of the State of Washington and of the United States. [12]

Except as herein admitted, plaintiff denies each and every allegation of defendant's affirmative answer.

For its answer to defendant's counterclaim herein, plaintiff denies each and every allegation thereof.

WHEREFORE plaintiff demands judgment as prayed for in its complaint.

CAREY & KERR,
F. G. DORETY and
CHARLES A. HART,
Attorneys for Plaintiff,

State of Oregon,
County of Multnomah,—ss.

I, E. Pearson, being first duly sworn, depose and say that I am Assistant Secretary of Great Northern Pacific Steamship Company, plaintiff in the above-entitled action; that I have read the foregoing reply, know the contents thereof, and that the same is true as I verily believe.

E. PEARSON.

Subscribed and sworn to before me this 5th day of October, 1917.

[Seal] G. C. FRISBIE,
Notary Public for Oregon.

My commission expires Aug. 4, 1920.

[Endorsed]: Reply filed in U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 19, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [13]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Stipulation of Facts.

The parties agree that the following may be taken as the facts in this case, and upon this agreed statement of facts decision of the Court may be made.

I.

The plaintiff is a corporation organized under the laws of the State of Oregon, engaged at the time stated below in the transportation of property as a common carrier by water between San Francisco, California, and Flavel, Oregon. During said times through arrangements with Spokane, Portland and Seattle Railway Company and Northern Pacific Railway Company, under the interstate commerce laws of the United States, plaintiff accepted property at San Francisco for transportation via its water line and via said rail lines to Seattle, Washington.

II.

The defendant is a corporation organized and existing under the laws of the State of Washington.

In May, 1917, defendant Brewing Company delivered to plaintiff at San Francisco, two carloads of beer for transportation over the route mentioned to Seattle, where they were to be delivered to the American Transfer Company, which was [14] the consignee named in the bills of lading. Said shipments were accepted by the Steamship Company and shipped from San Francisco as two carload shipments, bills of lading issued accordingly and freight charges prepaid on the basis of the carload rates in the sum of $425.57.

III.

Said shipments so made by defendant consisted of numerous cases or packages of bottled beer, each of which bore a permit as required by the laws of the State of Washington, and each of which was marked in such a manner as fully to comply with the laws of the State of Washington and also the laws of the United States relating to the interstate transportation of intoxicating liquor. Each package in said shipment contained no more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit. The American Transfer Company, consignee of said shipment, was a corporation operating vehicles for the drayage and transportation of goods in and about the City of Seattle, and the shipments were consigned to it for the purpose of enabling it to distribute the different packages making up said shipments to the individuals whose names appeared on the permits.

IV.

Plaintiff Steamship Company transported the two shipments of beer on one of its steamers to Flavel, at which place they were transferred to freight-cars for transportation over the Spokane, Portland and Seattle Railway to Portland, Oregon, where the shipments were to be delivered to the Northern Pacific Railway Company for transportation to Seattle. At and prior to the time of the shipment Spokane, Portland and Seattle Railway Company was operating a special freight service in connection with the [15] steamship line of the plaintiff Steamship Company, and less than carload shipments were commonly loaded into merchandise cars at Flavel and handled in bulk until arrival at Portland or at some other point at which distribution could be begun. Defendant's two shipments were placed in merchandise cars of this kind for transportation to Portland, at which place they were to be delivered to the Northern Pacific Company for transportation to destination. Thereafter and prior to the delivery of said shipments to the Northern Pacific Railway Company at Portland, the latter company refused to accept said shipments as carload shipments, being of the opinion that under the laws of the State of Washington, the beer could not be transported into Washington in carload lots, and said Spokane, Portland and Seattle Company, being also of the opinion that the shipments could not be so transported into Washington as carload shipments, rebilled the two carload shipments at Portland and segregated them into individual less than carload shipments, each pack-

age constituting one shipment, and delivered the shipments in that manner to the Northern Pacific Railway Company, which company transported the same under said rebilling to Seattle where delivery of the individual packages was made to the persons whose names appeared on the permits attached thereto, or upon their order. No claims for any additional charges were made upon the different individuals when the packages were delivered.

V.

One of the cars contained 1,109 packages, weighing 60,891 pounds, and the other 1,456 packages, weighing 79,798 pounds, the weight of each car exceeding the carload minimum named in the tariff. The rates applicable to the shipments were on file with the Interstate Commerce Commission and were combination rates based upon Portland. The through carload [16] rate from San Francisco to Portland was 15¢ per hundred lbs., and from Portland to Seattle 15¢, making the combination carload rate 30¢ per 100 lbs., which is the rate paid on said shipments.

The through less than carload rate from San Francisco to Portland was 25¢ per 100 lbs., with a minimum of 50¢ on a single shipment, and from Portland to Seattle 23¢ with a minimum of 25¢ for a single shipment. If the said shipments could not lawfully have been transported into the State of Washington as carload shipments and delivery made to the Transfer Company and plaintiff is entitled to charge the less than carload rates for the entire transportation of said shipments, the total charges due plaintiff and its connecting carriers are $1,927.27 and

plaintiff is entitled to recover the difference between the sum and the charges based on the carload rates of $425.57 paid at the time of delivery to plaintiff, or the sum of $1,501.70.

VI.

Prior to the making of said shipment plaintiff had entered into an agreement with its connecting carriers by rail hereinabove named, by which it agreed to advance and pursuant to which it did advance to said connecting carriers by rail their respective charges for the portion of the transportation furnished by each of them, respectively, and by which each of said companies authorized plaintiff to collect from defendant the regular tariff charge for the entire transportation from San Francisco, California, to Seattle, Washington.

Dated March 22, 1920.

CAREY & KERR,
C. A. HART,
Attorneys for Plaintiff,
S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Stipulation of Facts. Filed in the United States *Dist. of* Washington, Northern Division. June 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Judgment.

The above-entitled action came on for trial June 7, 1920, plaintiff appearing by its attorney, Charles A. Hart, and defendant appearing by its attorney, S. J. Wettrick, and it appearing to the Court that an agreed statement of all of the facts in this case duly signed by the parties had theretofore been filed and that the parties had stipulated that the case may be submitted and decided by the Court upon the said agreed statement of facts, and that a jury had been duly waived by said parties; and the Court having concluded as a matter of law from said statement of facts that plaintiff is entitled to judgment, it is now

ORDERED AND ADJUDGED that plaintiff have judgment against the defendant for the sum of fifteen hundred one and 70/100 ($1501.70) dollars with interest from June 7, 1920, together with the sum of $100.65 costs heretofore taxed in favor of plaintiff and against defendant in the Circuit Court

of Appeals for the Ninth Circuit, as appears from the mandate heretofore entered in this action, and with the sum of $20.45 costs and disbursements duly taxed and allowed in this court.

DONE in open court this 18th day of June, 1920.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

In the District Court of the United States for the Western District of Washington.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Petition for Writ of Error.

The Rainier Brewing Company, defendant above named, respectfully shows:

That on June 18, 1920, a final judgment was entered in the above-entitled cause against defendant and in favor of plaintiff, and said defendant feeling itself aggrieved by said judgment now peti-

tions this court for an order allowing said defendant to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided for the correction of errors so complained of and herewith assigned, and that an order be made fixing the amount of the bond which the defendant shall give and furnish upon said writ of error.

S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Petition for Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Assignment of Error and Prayer for Reversal.

Now comes the above-named defendant, Rainier

Brewing Company, and says that in the record and proceedings of the above-entitled cause and in the rendition of judgment therein manifest error has been committed to the prejudice of said defendant in this:

That the learned Court erred—

1. In concluding as a matter of law from the statement of facts upon which this cause was submitted for decision that plaintiff is entitled to judgment and in granting and entering judgment in favor of plaintiff and against defendant.

2. In failing to enter judgment of dismissal of this action and for costs and disbursements in favor of defendant and against plaintiff.

WHEREFORE, defendant prays that the said judgment be reversed and an order entered dismissing said action, with costs to the defendant.

S. J. WETTRICK,
Attorney for Defendant.

[Indorsed]: Assignment of Error and Prayer for Reversal. Filed in the United States District Court, Western District of Washington, Northern Division, June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Order Allowing Writ of Error and Fixing Bond.

Upon motion of S. J. Wettrick, attorney for defendant, Rainier Brewing Company, in the above-entitled cause, upon the filing of petition on writ of error and assignments of error;

IT IS HEREBY ORDERED that a writ of error as prayed for in said petition be allowed and that the amount of the bond to be given by defendant, Rainier Brewing Company, upon said writ of error be and the same is hereby fixed at the sum of seventeen hundred fifty ($1750.00) dollars.

Dated this 18th day of June, 1920.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Order Allowing Writ of Error and Fixing Bond. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Rainier Brewing Company, a corporation, as principal, and the United States Fidelity and Guaranty Company, a corporation, duly organized under the laws of the State of Maryland, as surety, are held and firmly bound unto the plaintiff in the above-entitled cause for the sum of Seventeen Hundred Fifty ($1750.00) Dollars, for the payment of which well and truly to be made the undersigned bind themselves, and each of them, jointly and severally, and their successors, representatives and assigns respectively, firmly by these presents.

SEALED with our seals and dated this 18th day of June, 1920.

WHEREAS, the above-named defendant, Rainier Brewing Company, has sued out a writ of error in the United States Circuit Court of Appeals for the

Ninth Circuit to reverse the judgment entered in the above-entitled action,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named Rainier Brewing Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and effect.

[Seal] RAINIER BREWING COMPANY,
By W. G. COLLINS,
Vice-Pres.
P. F. GLASER,
Secretary.

UNITED STATES FIDELITY AND GUARANTY CO.
By C. H. CAMPBELL,
Attorney in Fact. [22]

The foregoing bond is hereby approved this 18th day of June, 1920.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Bond on Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Praecipe for Preparation of Transcript of Record Upon Writ of Error.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause for the purpose of transmission to the United States Circuit Court of Appeals for the Ninth Circuit with the writ of error in this cause, said transcript of the record to consist of the following:

1. Complaint.
2. Answer and counterclaim.
3. Reply.
4. Stipulation of facts (agreed statement of facts).
5. Judgment.
6. Petition for writ of error.
7. Assignment of error and prayer for reversal.
8. Order Allowing writ of error and fixing bond.
9. Bond on writ of error.
10. Writ of error.

11. Citation on writ of error.
12. Acceptance of service.

We waive the provisions of the act approved February 13, 1911, and request that you forward typewritten transcript to the Circuit Court of Appeals for the Ninth Circuit for printing as provided under Rule 105 of this court.

S. J. WETTRICK,
Attorney for Defendant. [24]

[Indorsed]: Praecipe for Preparation of Transcript of Record *of Record* upon Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. June 23, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [25]

United States District Court, Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 25, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [26]

Clerk's Fee (Sec. 28 R. S. U. S.) for making record, certificate or return, 50 folios at 15¢..... $7.50
Certificate of clerk to transcript of record—4 folios at 15¢..... .60
Seal to said certificate..... .20

I hereby certify that the above cost for preparing and certifying record amounting to $8.30 has been paid to me by counsel for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause, together with original acceptance of service.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 8th day of July, 1920.

[Seal] F. M. HARSHBERGER,
Clerk U. S. District Court. [27]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America to the Honorable, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you between Great Northern Pacific Steamship Company, plaintiff, and Rainier Brewing Company, defendant, a manifest error hath happened to the great damage of the said defendant, Rainier Brewing Company, as by its complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, in the said Circuit Court of Appeals to be then [28] and there held, to the end that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of June, in the year of our Lord one

thousand nine hundred and twenty.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the Western District of Washington, Northern Division.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,
District Judge. [29]

[Endorsed]: No. 3713. In the District Court of the United States, for the Western District of Washington, Northern Division. Great Northern Pacific Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [30]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Citation on Writ of Error.

United States of America,
District of Washington,—ss.

To Great Northern Pacific Steamship Company, a Corporation, GREETING:

WHEREAS, Rainier Brewing Company has petitioned for and an order has been made allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the above-entitled court in your favor and has given the security required by law and the order of this Court;

You are hereby cited and admonished to be and appear before the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty (30) days from the date hereof, to show cause, if any there be, why the errors complained of in said judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand at Seattle, in said District, this 18th day of June, 1920.

[Seal] EDWARD E. CUSHMAN,
Judge. [31]

[Endorsed]: No. 3713. In the District Court of the United States, for the Western District of Washington, Northern Division. Great Northern Pacific Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Citation on Writ of Error. Filed in the United States District Court, Western District of

Washington, Northern Division. Jun. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [32]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3713.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

RAINIER BREWING COMPANY, a Corporation,

Defendant.

Acceptance of Service.

Due service of the petition for writ of error, assignment of error and prayer for reversal, order allowing writ of error and fixing bond, bond on writ of error, writ of error, citation on writ of error and praecipe for preparation of transcript of record in the above-entitled cause is hereby acknowledged by receipt of true copies thereof this 18th day of June, 1920.

CAREY & KERR and
C. A. HART,
Attorneys for Plaintiff. [33]

[Endorsed]: No. 3713. In the District Court of the United States for the Western District of Washington, Northern Division. Great Northern Pacific

Steamship Company, a Corporation, Plaintiff, vs. Rainier Brewing Company, a Corporation, Defendant. Acceptance of Service. Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 23, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 3520. United States Circuit Court of Appeals for the Ninth Circuit. Rainier Brewing Company, a Corporation, Plaintiff in Error, vs. Great Northern Pacific Steamship Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 12, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error.

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

S. J. Wettrick, 805 Arctic Bldg., Seattle, Washington, Counsel for Plaintiff in Eror.

Messrs. Carey & Kerr and C. A. Hart, 1410 Yeon Building, Portland, Oregon, Counsel for Defendant in Error.

At a stated term, to wit, the September term, A. D. 1920, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court-Room, in the City of Seattle, in the State of Washington, on Tuesday, the twenty-first day of September, in the year of our Lord one thousand nine hundred and twenty.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.

The Honorable William H. Hunt, Circuit Judge.

The Honorable Charles E. Wolverton, District Judge.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Order of Submission.

Order above-entitled cause argued by Mr. S. J. Wettrick, counsel for the plaintiff in error, and by Mr. Charles A. Hart, counsel for the defendant in error, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1920, of the United States Circuit Court of Appeals for the Ninth Circuit held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Monday, the seventh day of February, in the year of our Lord one thousand nine hundred and twenty-one.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, Presiding.
The Honorable Erskine M. Ross, Circuit Judge.
The Honorable William W. Morrow, Circuit Judge.

In the Matter of the Filing of Certain Opinions and of the Filing and Recording of Certain Judgments.

By direction of the Honorable William B. Gilbert and William W. Morrow, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the causes were heard, ordered that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the Minutes of this Court in each of the said causes in accordance with the opinion filed therein:
* * *

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Opinion U. S. Circuit Court of Appeals.

S. J. Wettrick for Plaintiff in Error;
Carey & Kerr and Charles A. Hart, for Defendant in Error.

Before Gilbert and Hunt, Circuit Judges, and Wolverton, District Judge.

WOLVERTON, *District Judge:*

This is the second appeal and in reality presents nothing new for our consideration. The facts are stipulated, and are, in brief, as follows:

In May, 1917, the Brewing Company delivered to the Steamship Company, at San Francisco, two carloads of beer for transportation to Seattle, to be delivered to the American Transfer Company, the consignee named in the bills of lading. The freight charges were prepaid, on the basis of carload rates, in the sum of $425.57.

The shipments consisted of numerous packages of bottled beer, each bearing a permit, and marked in such manner as to fully comply with the laws of the State of Washington, and also with the laws of the United States relating to interstate shipment of intoxicating liquor.

The American Transfer Company, the consignee, was a corporation operating vehicles for the transportation of goods in and about the City of Seattle, and the shipments were consigned to it to enable it to distribute the different packages making up the shipments to the individuals whose names appeared on the permits.

The two carloads of beer were transported as far as Portland, Oregon, where they were to be delivered by the Spokane, Portland & Seattle Railway Company to the Northern Pacific Railway Company for transportation to Seattle. In view of the Washington statute relating to the shipment of intoxicating liquor into the state, the Northern Pacific Railway Company refused to accept the shipments in carload lots; whereupon they were rebilled in separate packages to the individuals holding the permits, as shown on the packages, thus segregating the carload shipments into 2,565 packages. So segregated, the shipments were accepted by the Northern Pacific Railway Company, and transported to Seattle, where delivery was made to the persons whose names appeared on the permits attached thereto, or upon their order.

At the through carload rate, the freight on the shipments was $425.57, which was prepaid. At less than carload rate, as rebilled,

it amounted to $1,927.27. After deducting the prepayment, this leaves $1,501.70, the amount for which plaintiff demands payment.

Judgment was rendered by the court below against the defendant (plaintiff in error) for this sum, from which error is prosecuted to this court.

The situation as disclosed by the stipulated facts is not different from that which appeared from the pleadings when the case was previously here. Great Northern Pac. S. S. Co. v. Rainer Brewing Co., 255 Fed. 762.

After a careful review of the cause, we find no reason for any different conclusion from that reached on the former appeal. Indeed, the facts being the same, the former judgment has become the law of the case, and is controlling on this appeal.

Affirmed.

Endorsed: Opinion. Filed February 7, 1921. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Judgment.

In Error to the District Court of the United States for the Western District of Washington, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the defendant in error and against the plaintiff in error.

It is further ordered and adjudged by this Court that the defendant in error recover against the plaintiff in error for its costs herein expended, and have execution therefor.

[Endorsed:] Judgment. Filed and Entered February 7, 1921, F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3120.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Plaintiff in Error,

vs.

RAINIER BREWING COMPANY, a Corporation, Defendant in Error.

(*Opinion U. S. Circuit Court of Appeals.*)

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Before

Gilbert, Ross and Hunt, Circuit Judges.

Ross, *Circuit Judge:*

It is provided, among other things, by the Statutes of the State of Washington, (Sec. 6262-15, Remington's Codes and Statutes of 1915) that any person desiring to ship or transport a certain prescribed quantity of any intoxicating liquor into any county of that state, shall appear before the county auditor and make a sworn statement showing, among other things, his name, that he is over 21 years of age, and the name and address of the person, firm or corporation from whom the shipment is to be made, upon which statement the auditor is authorized to issue a permit to such applicant to ship or transfer such limited quantity of liquor. Such permit the statute requires to be attached to and plainly affixed in a conspicuous place to the package or parcel containing the liquor, and when so affixed "shall authorize any railroad company, express company, transportation company, common carrier, or any person, firm or corporation operating any boat, launch or vehicle for the transportation of goods, wares and merchandise within the state of Washington, to transport, ship or carry not to exceed one-half gallon of intoxicating liquor other than beer, or twelve quarts or twenty-four pints of beer." And further declares that "any person so transporting such intoxicating liquor shall, before the delivery of such package or parcel of intoxicating liquor, cancel said permit and so deface the same that it cannot be used again."

Sec. 6262-18 of the same statutes makes it unlawful for any carrier to bring any liquor into the state except such as is expressly permitted by the statute, and Sec. 6262-20 prohibits all carriers from making any such transportation within the state unless the package or parcel is plainly marked with the words: "This package contains intoxicating liquor."

The complaint in the action which was brought in the court below by the plaintiff in error to recover an alleged balance claimed to

be due for the transportation and delivery of certain beer, together with the other pleadings, shows among other things, that plaintiff was a common carrier by water, operating boats between San Francisco and Flavel, Oregon; that at Flavel it connected with the rail line of the Spokane, Portland and Seattle Railway Company, which at Portland, connected with the line of the Northern Pacific Company to Seattle and elsewhere; that the Steamship Company had joined with the rail lines in making through rates from San Francisco to Seattle, thus bringing the transportation in question under the Interstate Commerce Act; that in May, 1917, the defendant brewing company delivered to the steamship company at San Francisco two shipments of beer for transportation by the steamship company and its rail connections to Seattle; that the shipments were billed as carload shipments and were consigned to the American Transfer Company; that each shipment consisted of a large number of individual cases or packages of bottled beer, each package containing not more than the quantity allowed to be imported into the State of Washington by an individual; that each package had affixed to it the permit required by the statute of that state; that the freight charges demanded and paid at the time of making the shipment were based on the carload rate and amounted to $425.57; that when the shipments were received by the rail carriers they concluded that the beer could not be transported into the State of Washington in carload lots and delivery made to a transfer company; that the two shipments were thereupon broken up into individual consignments and each of the packages included in the two cars was thereafter handled to destination as a less than carload shipment and delivered to the person indicated by the permit affixed to the package; that according to the duly filed and published tariffs the charges for the transportation of the packages of beer in less than carload shipments amounted to $2,041.54; and giving defendant company credit for the $425.57 paid at the time of making the shipment, the plaintiff carrier claimed and asked judgment for the balance of $1,615.97.

The court below dismissed the action and the present writ of error was sued out to review its judgment.

Section 240 of the Federal Code provides among other things, as follows:

"Whoever shall knowingly ship * * * from one State * * * into any other State * * * any package of or package containing any * * * intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents and the quantity contained therein, shall be fined not more than $5,000. * * *"

There being no definition of the word "consignee" contained in that act, it must be assumed, as was held in United States v. Eighty-seven Barrels, etc. of Wine, 180 Fed. 215, that "Congress used it in its ordinary commercial and legal signification" and which plainly means (page 220 Id.) "that person or corporation to whom

the carrier may lawfully make delivery of the consigned goods in accordance with its contract of carriage." In the instant case the carrier could not lawfully make delivery of either of the two carloads of beer shipped to the consignee named in the respective bills of lading—the Transfer Company—by reason of the prohibitive provisions of the Statutes of the State of Washington that have been referred to. To have done so would, therefore, have been a crime not only under the Statute of that state, but under Section 240 of the Federal Criminal Code as well.

It is well settled that an interstate carrier must collect the tariff rates applicable to the transportation furnished as fixed by law, no matter what may have been the terms or compensation agreed upon by it and the shipper. Texas & Pacific Railway v. Mugg, 202 U. S. 242. And while the plaintiff was authorized to carry the beer here in question into the State of Washington it did so subject to the requirements of the laws of that State which, as has been seen, prohibited its delivery in bulk to the consignee or in any other manner than by the individual package to the individual authorized by the state statutes to receive it, taking care to first cancel and deface the permit thereto attached. Clark Distilling Company v. Western Maryland Railway Company and State of West Virginia. Clark Distilling Company v. American Express Company and State of West Virginia, 242 U. S. 311. We therefore think it clear that for the services thus required of and performed by the carrier in the present case it was legally entitled to recover the legally established rates therefor and that, accordingly, the judgment below must be, and hereby is, reversed and the case remanded for further proceedings in accordance with the views above expressed.

[Endorsed:] Opinion. Filed Feb. 24, 1919, F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Petition for Writ of Error.

Rainier Brewing Company, a corporation, the above named plaintiff in error, respectfully shows that on the 7th day of February, 1921, judgment was entered by this Court in the above entitled cause affirming a judgment of the District Court of the United States for the Western District of Washington, Northern Division, against plaintiff in error and in favor of defendant in error, and said plaintiff in error feeling itself aggrieved by the said judgment now pet-

tions this Court for an order allowing said plaintiff in error to prosecute a writ of error to the Supreme Court of the United States; that the matter in controversy exceeds one thousand dollars and this suit does not belong to any of the classes in which the judgment of this Court is made final by Section 128 of the Judicial Code or otherwise, and that it is a proper case to be reviewed by the Supreme Court of the United States on a Writ of Error; and therefore your petitioner respectfully prays that a Writ of Error be allowed in the above entitled cause, and that a duly authenticated transcript of the record and proceedings in said cause, with all things concerning the same, may be sent to the Supreme Court of the United States, in order that the error complained of in the assignment of errors herewith filed by said plaintiff in error may be reviewed and if error be found, corrected in accordance with law and justice.

(Sgd.) S. J. WETTRICK,
Attorney for Plaintiff in Error.

STATE OF OREGON,
County of Multnomah, ss:

Due service of within petition for writ of error is hereby accepted at Portland, Oregon, this 19th day of February, 1921, by receiving a copy thereof duly certified to as such by the attorney for plaintiff in error.

(Sgd.) CHARLES A. HART,
Attorney for Defendant in Error.

[Endorsed:] Petition for writ of error to Supreme Court U. S. Filed February 28, 1921. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Assignments of Error and Prayer for Reversal.

Now comes the above named plaintiff in error, Rainier Brewing Company, and says that in the record and proceedings of the United States Circuit Court of Appeals in the above entitled cause, and in the rendition of judgment therein, manifest error has been committed to the prejudice of said plaintiff in error in this:

That learned Court erred:

1. In affirming the judgment of the District Court of the United States, for the Western District of Washington, Northern Division.

2. In concluding from the statement of facts upon which this cause was submitted for decision that defendant in error is entitled to judgment and in granting and entering judgment in favor of defendant in error and against plaintiff in error.

3. In holding that defendant in error and its connecting carriers could not lawfully make delivery of the carloads of beer involved in this case to the consignee named in the bills of lading.

4. In holding that the defendant in error is entitled to charge less-than-carload rates for the transportation of the shipments involved in this case.

5. In failing to enter judgment of dismissal of this action and for costs and disbursements in favor of plaintiff in error and against defendant in error.

Wherefore, plaintiff in error prays that for the errors aforesaid and other errors appearing in the record the said judgment of the United States Circuit Court of Appeals affirming the judgment of said District Court be reversed and annulled, and judgment of dismissal granted plaintiff in error with costs against the defendant in error.

(Sgd.) S. J. WETTRICK,
Attorney for Plaintiff in Error.

Receipt of true copy of the foregoing Assignments of Error and Prayer for Reversal is hereby admitted this 19th day of February, 1921.

(Sgd.) CHARLES A. HART,
Attorney for Defendant in Error.

[Endorsed:] Assignments of Error and Prayer for Reversal to Supreme Court U. S. Filed February 28, 1921, F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Order Allowing Writ of Error and Fixing Bond.

This matter coming on to be heard this 28th day of February, 1921, upon the petition of the plaintiff in error in the above entitled cause for a Writ of Error, and it appearing to the Court that the petition should be granted and that a transcript of the record, proceedings and papers on which the judgment of this Court was rendered properly certified should be sent to the Supreme Court of the United States as prayed,

Now, therefore, it is ordered that the Writ of Error be allowed upon bond being furnished by plaintiff in error conditioned according to law in the sum of Two Thousaid ($2,000.00) Dollars, the same to act as a supersedeas bond and also as a bond for costs on appeal, and that a true copy of the record, assignment of errors and all proceedings in the case in the Circuit Court of Appeals shall be transmitted to the Supreme Court of the United States duly certified according to law in order that said Court may inspect the same and take such action thereon as it deems proper according to law.

Dated this 28th day of February, 1921.

(Sgd.) WM. B. GILBERT,
Senior U. S. Circuit Judge.

[Endorsed:] Order Allowing Writ of Error and Fixing Bond. Filed February 28, 1921, F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents: That the undersigned, Rainier Brewing Company, a corporation, as principal, and U. S. Fidelity

& Guaranty Company, a corporation duly organized under the laws of the State of Maryland, as surety, are held and firmly bound unto the defendant in error in the above entitled cause for the sum of Two Thousand ($2,000.00) Dollars, for the payment of which well and truly to be made the undersigned bind themselves, and each of them, jointly and severally, and their successors, representatives and assigns, respectively, firmly by these presents.

Sealed with our seals and dated this 19th day of February, 1921.

Whereas, the above named plaintiff in error, Rainier Brewing Company, has sued out a Writ of Error in the United States Supreme Court to reverse the judgment entered in the above entitled court affirming the decision of the United States District Court for the Western District of Washington, Northern Division, and awarding costs to defendant in error;

Now, therefore, The condition of this obligation is such that if the above named Rainier Brewing Company, a corporation, shall prosecute such Writ of Error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void, otherwise to remain in full force and effect.

RAINIER BREWING COMPANY,
(Sgd.) By Name cannot be deciphered.
Treasurer.

[SEAL.] U. S. FIDELITY & GUARANTY CO.,
(Sgd.) By C. H. CAMPBELL,
Attorney in Fact. [SEAL.]

Attest:

(Sgd.) P. H. GLASER,
Secty.

The undersigned attorneys for defendant in error hereby consent to limiting the bond on Writ of Error herein to the sum of Two Thousand ($2,000.00) Dollars, and hereby approve the foregoing bond.

Dated at Portland, Oregon, February 19th, 1921.

(Sgd.) CHARLES A. HART,
Attorneys for Defendant in Error.

The foregoing bond is hereby approved this 28th day of February, 1921.

(Sgd.) WM. B. GILBERT,
Senior U. S. Circuit Judge.

[Endorsed:] Bond on writ of error to Supreme Court U. S. Filed February 28, 1921. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,
vs.
GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Præcipe for Certified Transcript of Record on Return to Writ of Error to Supreme Court U. S.

To the Clerk of the said Court:

SIR:

Please make and furnish me with a certified transcript of the record (including the proceedings had in said Circuit Court of Appeals), for use on writ of error from the Supreme Court of the United States in the above entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a typewritten copy of the following-entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:

2. Order of submission entered September 21, 1920;

3. Order directing filing of Opinion etc. entered February 7, 1921;

4. Opinion filed February 7, 1921;

5. Opinion in Great Northern Pacific Steamship Co. vs. Rainier Brewing Co., No. 3120;

6. Judgment filed and entered February 7, 1921;

7. The following papers on Writ of Error from Supreme Court U. S. Filed February 28, 1921;
Petition for Writ of Error;
Assignment of Error and prayer for reversal;
Order allowing writ of error and fixing amount of bond;
Bond on writ of error;

8. Præcipe for transcript of record filed March 9, 1921;

9. Certificate of Clerk, U. S. Circuit Court of Appeals to said transcript;

10. Original writ of error;

11. Original citation on writ of error.

(Sgd.) S. J. WETTRICK,
Counsel for Plaintiff in Error.

Service of a copy of the within præcipe is hereby admitted this — day of March, A. D. 1921.

(Sgd.) CHARLES A. HART,
Counsel for Defendant in Error.

[Endorsed:] Præcipe for certified transcript of record on writ of error to Supreme Court U. S. Filed March 9, 1921, F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Return to Writ of Error from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Fifty-three (53) pages, from and including 1 to and including 53, to be a full, true and correct copy of the complete record in the above entitled cause, including the assignment of errors, and of all proceedings had in the above entitled cause, and of all papers, including the opinion filed in said Circuit Court of Appeal in the above entitled cause, as the originals thereof remain on file, and appear of record in my office, and that the same constitute the transcript of record and return to the writ of error to the Supreme Court of the United States in the above entitled cause.

Attest my hand and seal of the said United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, this 12th day of March, A. D. 1921.

[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between Rainier Brewing Company, a corporation, plaintiff in error, and Great Northern Pacific Steamship Company, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, Rainier Brewing Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within sixty days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 28th day of February, in the year of our Lord one thousand nine hundred twenty-one.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By PAUL P. O'BRIEN,
Deputy Clerk.

The foregoing Writ is hereby allowed.

WM. B. GILBERT,
Senior U. S. Circuit Judge.

Service of the foregoing original writ of error and receipt of a true copy thereof is hereby admitted this 7th day of March, 1921.

CHARLES A. HART,
Attorneys for Defendant in Error.

[Endorsed:] No. 3520. United States Circuit Court of Appeals for the Ninth Circuit. Rainier Brewing Company, a corporation, plaintiff in error, vs. Great Northern Pacific Steamship Company, a corporation, defendant in error. Writ of Error. Filed Mar. 9, 1921. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk. S. J. Wetrick, Attorney for Plaintiff in Error, 805 Arctic Bldg., Seattle, Washington.

Return to Writ of Error.

The Answer of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

As within we are commanded, we certify, under the seal of our said Circuit Court of Appeals, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the Supreme Court of the United States, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ has been duly lodged for the within named defendant in error.

Dated at San Francisco, California, this 12th day of March, A. D. 1921.

THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk.
By PAUL P. O'BRIEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3520.

RAINIER BREWING COMPANY, a Corporation, Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant in Error.

Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss:*

To Great Northern Pacific Steamship Company, a Corporation, Greeting:

Whereas, Rainier Brewing Company has petitioned for and an order has been made allowing a Writ of Error to the Supreme Court of the United States from the judgment rendered in the above entitled court and has given the security required by law and the order of this Court, you are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within sixty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, to show cause, if any there be, why errors complained of in said judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand and seal this 28th day of February, in the year of our Lord one thousand nine hundred twenty-one.

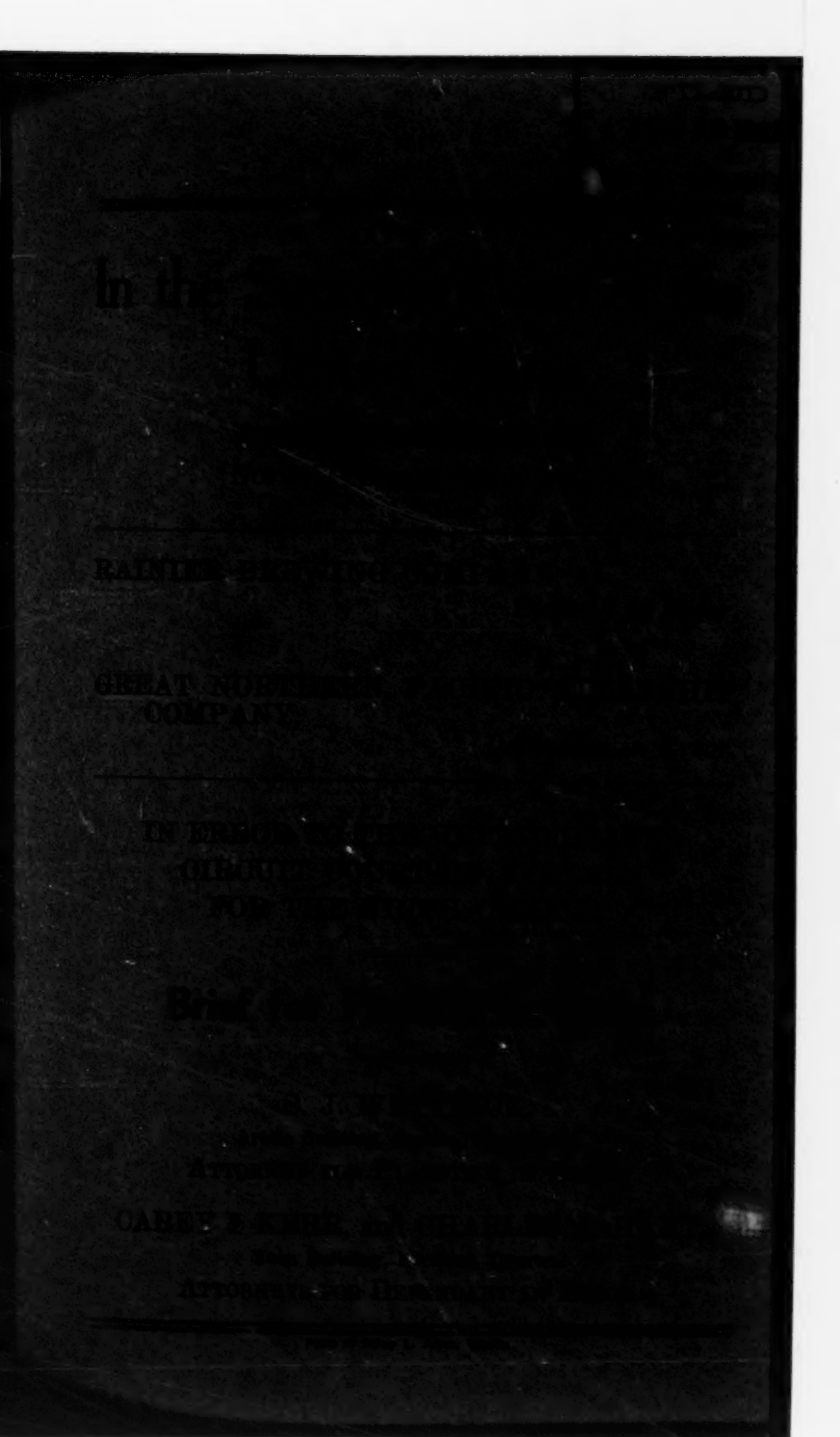
WM. B. GILBERT,
Senior U. S. Circuit Judge.

Service of the foregoing original Citation on Writ of Error and receipt of a true copy thereof is hereby admitted this —— day of March, 1921.

CHARLES A. HART,
Attorney for Defendant in Error.

[Endorsed:] No. 3520. United States Circuit Court of Appeals for the Ninth Circuit. Rainier Brewing Company, a corporation, plaintiff in error, vs. Great Northern Pacific Steamship Company, a corporation, defendant in error. Citation on Writ of Error. Filed Mar. 9, 1921, F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk. S. J. Wettrick, Attorney for Plaintiff in Error, 805 Arctic Bldg., Seattle, Washington.

Endorsed on cover: File No. 28,177. U. S. Circuit Court of Appeals, 9th Circuit. Term No. 820. Rainier Brewing Company, plaintiff in error. vs. Great Northern Pacific Steamship Company. Filed March 24th, 1921. File No. 28,177.



In the Supreme Court of the United States

No. 820, October Term, 1920.
No. 267, October Term, 1921.

RAINIER BREWING COMPANY,
Plaintiff in Error,

vs.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY,
Defendant in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief for Plaintiff in Error

STATEMENT OF THE CASE.

This action was brought by the Great Northern Pacific Steamship Company against the Rainier Brewing Company to recover additional freight charges resulting from the application of less-than-carload rates instead of carload rates on two shipments of beer from San Francisco to Seattle in May, 1917.

The case was submitted to the lower court upon an agreed statement of facts (Tr. pp. 13 to 17), which for the convenience of the Court is here set forth:

I.

The plaintiff is a corporation organized under the laws of the State of Oregon, engaged at the time stated below in the transportation of property as a common carrier by water between San Francisco, California, and Flavel, Oregon. During said times through arrangements with Spokane, Portland and Seattle Railway Company and Northern Pacific Railway Company, under the interstate commerce laws of the United States, plaintiff accepted property at San Francisco for transportation via its water line and via said rail lines to Seattle, Washington.

II.

The defendant is a corporation organized and existing under the laws of the State of Washington.

In May, 1917, defendant Brewing Company delivered to plaintiff at San Francisco, two carloads of beer for transportation over the route mentioned to Seattle, where they were to be delivered to the American Transfer Company, which was the consignee named in the bills of lading. Said shipments were accepted by the Steamship Company and shipped from San Francisco as two carload shipments, bills of lading issued accordingly and freight charges prepaid on the basis of the carload rates in the sum of $425.57.

III.

Said shipments so made by defendant consisted of numerous cases or packages of bottled beer, each of which bore a permit as required by the laws of the State of Washington, and each of which was marked in such a manner as fully to comply with the laws of the State of Washington and also the laws of the United States relating to the interstate transportation of intoxicating liquor. Each package in said shipment contained no more than the amount of beer authorized under the laws of the State of Washington to be transported under such a permit. The American Transfer Company, consignee of said shipments, was a corporation operating vehicles for the drayage and transportation of goods in and about the City of Seattle, and the shipments were consigned to it for the purpose of enabling it to distribute the different packages making up said shipments to the individuals whose names appeared on the permits.

IV.

Plaintiff Steamship Company transported the two shipments of beer on one of its steamers to Flavel, at which place they were transferred to freight cars for transportation over the Spokane, Portland and Seattle Railway to Portland, Oregon, where the shipments were to be delivered to the Northern Pacific Railway Company for transportation to Seattle. At and prior to the time of the shipment Spokane, Portland and Seattle Railway Company was

operating a special freight service in connection with the steamship line of the plaintiff Steamship Company, and less than carload shipments were commonly loaded into merchandise cars at Flavel and handled in bulk until arrival at Portland or at some other point at which distribution could be begun. Defendant's two shipments were placed in merchandise cars of this kind for transportation to Portland, at which place they were to be delivered to the Northern Pacific Company for transportation to destination. Thereafter and prior to the delivery of said shipments to the Northern Pacific Railway Company at Portland, the latter company refused to accept said shipments as carload shipments, being of the opinion that under the laws of the State of Washington, the beer could not be transported into Washington in carload lots, and said Spokane, Portland & Seattle Company being also of the opinion that the shipments could not be so transported into Washington as carload shipments, rebilled the two carload shipments at Portland and segregated them into individual less than carload shipments, each package constituting one shipment, and delivered the shipments in that manner to the Northern Pacific Railway Company, which company transported the same under said rebilling to Seattle, where delivery of the individual packages was made to the persons whose names appeared on the permits attached thereto, or upon their order. No claims for any additional charges were made upon the different individuals when the packages were delivered.

V.

One of the cars contained 1,109 packages, weighing 60,891 pounds, and the other 1,456 packages, weighing 79,798 pounds, the weight of each car exceeding the carload minimum named in the tariff. The rates applicable to the shipments were on file with the Interstate Commerce Commission and were combination rates based upon Portland. The through carload rate from San Francisco to Portland was 15c per 100 lbs., and from Portland to Seattle 15c, making the combination carload rate 30c per 100 lbs., which is the rate paid on said shipments.

The through less-than-carload rate from San Francisco to Portland was 25c per 100 lbs., with a minimum of 50c on a single shipment, and from Portland to Seattle 23c with a minimum of 25c for a single shipment. If the said shipments could not lawfully have been transported into the State of Washington as carload shipments and delivery made to the Transfer Company and plaintiff is entitled to charge the less-than-carload rates for the entire transportation of said shipments, the total charges due plaintiff and its connecting carriers are $1,827.27 and plaintiff is entitled to recover the difference between that sum and the charges based on the carload rates of $425.57 paid at the time of delivery to plaintiff, or the sum of $1,501.70.

VI.

Prior to the making of said shipments plaintiff had entered into an agreement with

its connecting carriers by rail hereinabove named, by which it agreed to advance and pursuant to which it did advance to said connecting carriers by rail their respective charges for the portion of the transportatoin furnished by each of them respectively, and by which each of said companies authorized plaintiff to collect from defendant the regular tariff charge for the entire transportation from San Francisco, California, to Seattle, Washington.

* * * * * *

The Steamship Company's claim for judgment upon this statement of facts is based upon the contention that under the laws of the State of Washington the shipments in question, which were received and billed as carload shipments and the carload rates prepaid, could not lawfully have been transported into that State in carload lots and delivered to the American Transfer Company; that the carriers therefore had to treat each package as a separate shipment; and that they are therefore entitled to charge less-than-carload rates.

The case was twice before the Circuit Court of Appeals. First on appeal by the Steamship Company from a judgment of dismissal on the pleadings. This judgment was reversed, and the case remanded for further proceedings. The opinion is reported in 255 Fed. 762, and will be found on pages 38 to 40 of the transcript. The case was then submitted upon the foregoing statement of facts to the lower court, which regarded the views of the appellate court as controlling and entered judgment for plaintiff.

Thereupon the Brewing Company appealed and the Circuit Court of Appeals, being of the opinion that the facts were the same, merely affirmed its former conclusions. This decision is reported in 270 Fed. 94 and will be found on page 36 of the transcript. The views of the court to which reference will hereinafter be made are expressed in the opinion on the first appeal.

ASSIGNMENT OF ERROR.

I.

The court erred in holding that upon the foregoing facts defendant in error is entitled to recover and in failing to direct the dismissal of this action.

ARGUMENT.

The applicable provisions of the Washington prohibition law are found in the following sections from Remington's 1915 Codes and Statutes:

Section 6262-15, after providing for the issuance of permits for shipments of liquor by County Auditors and the form of such permits, continues as follows (italics ours):

> "*This permit* shall be attached to and plainly affixed in a conspicuous place to any package or parcel containing intoxicating liquor, transported or shipped within the State of Washington, and when so affixed, *shall authorize* any railroad company, express com-

pany, transportation company, common carrier, or *any person, firm or corporation operating any* boat, launch or *vehicle for the transportation of goods,* wares and merchandise within the State of Washington, to transport, ship or carry not to exceed one-half gallon of intoxicating liquor other than beer, or twelve quarts or twenty-four pints of beer. Any person so transporting such intoxicating liquor shall, before the delivery of such package or parcel of intoxicating liquor, cancel said permit and so deface the same that it cannot be used again. It shall be unlawful for any person to ship, carry or transport any intoxicating liquor within the state without having attached thereto or to the package or parcel containing the same, such permit, or to transport or ship under said permit an amount in excess of the amount or quantity hereinbefore limited."

Section 6262-18 reads as follows:

"It shall be unlawful for any express company, railroad company or transportation company, or any person, engaged in the business of transporting goods, wares and merchandise, to knowingly transport or convey any intoxicating liquor within this state, without having a permit issued by the county auditor for the transportation of such intoxicating liquor affixed in a conspicuous place to the parcel or package containing the liquor, or to deliver such liquor without defacing or canceling such permit so that the same cannot be used again. It shall be unlawful for any person to knowingly receive from any railroad company or any person engaged in

> the business of transporting goods, wares and merchandise any intoxicating liquor without said intoxicating liquor having a permit issued by the county auditor for such shipment attached thereto and properly canceled."

It is expressly admitted by the stipulation that each one of the packages which made up the shipments in question was marked in such a manner as fully to comply with the laws of the State of Washington and of the United States relating to the interstate transportation of intoxicating liquor. It will therefore not be necessary to quote the provisions of the statute upon this point.

Briefly stated, the sections above quoted make it unlawful for anyone engaged in the transportation of goods to carry any package containing intoxicating liquor within the State of Washington without a permit attached thereto or to deliver the same without cancelling such permit.

The statute expressly includes among those authorized to transport intoxicating liquor *a person, firm or corporation operating a vehicle for the transportation of goods.* The American Transfer Company therefore had as much right and authority to transport the shipments in question as the other carriers. The shipments were consigned to it for the purpose of distributing the different packages to the individuals whose names appeared on the permits. It constituted a link in the transportation from San Francisco to the purchaser's residence. There would be just as much reason for holding that the

Steamship Company could not deliver the shipments to the railroads as there is for holding that the railroads could not deliver them to the Transfer Company.

In view of the express provisions of the statute, no one will deny that any person, firm or corporation operating a vehicle for the transportation of goods, including the American Transfer Company, could have transported these shipments from Portland, Oregon, to Seattle, Washington, and delivered them to the permittees with as much right and authority as the railroads or any other transportation agency recognized by the statute. Similarly, there can be no doubt that under the statute the Transfer Company could have received the shipments at any point in the State of Washington and transported them to any other point not reached by a rail carrier, thus completing transportation from point of origin to ultimate destination. Such a situation does not differ from that in the present case except that the transportation which the Transfer Company was to perform was confined to the limits of Seattle or its environs.

The purpose of handling the shipments in this manner was to take advantage of the carload rates and to deliver the shipments directly to the residence of the purchaser. While the Transfer Company was the consignee named in the bills of lading, the shipments were consigned to it *for further transportation* in exactly the same manner as they would have been if they had been consigned to a steamship com-

pany for transportation to Alaska, or to a railroad company or any other transportation agency with which the carriers which issued the bills of lading had no through arrangements to any point within the State of Washington.

The fact, therefore, that the American Transfer Company was named as the consignee of the shipments in question does not change its status as a transportation company authorized by law and employed by the shipper to transport them. The arrangement was well understood by everybody concerned and particularly by defendant in error, as indicated by the allegation in its complaint that the shipments were consigned to the American Transfer Company for the purpose of distributing the beer to the individuals whose names appeared upon the packages and by the agreed facts whereby it is admitted that that was the purpose.

The whole contention of plaintiff in error is based upon the erroneous assumption that the laws of the State of Washington placed upon it and its connecting carriers the duty of preventing any violation of those laws by others and that they were the only transportation agencies authorized to handle and transport such shipments. This apparently proceeds from the idea that railroad companies were singled out by the law as the only ones upon whom any reliability could be placed and that other agencies such as persons operating vehicles for the transportation of goods, though specifically named and authorized by the statute, were not to be trusted.

The statute makes no such distinction between those which it expressly authorizes to transport such packages.

Under the circumstances of these shipments, all that the rail carriers were required to do was to deliver the carloads to the American Transfer Company, whereupon their liability would have ceased and it would have been the duty of the latter to deface the permits before delivering the packages to the permittees or purchasers. The law specifically says that any person transporting such intoxicating liquor (which includes a person operating a vehicle for hire) shall, before the delivery of the packages, cancel the permits and deface the same so that they cannot be used again. This does not mean that the permits must be defaced before delivery by one transportation company to another, but before delivery to the purchaser or permittees, and it was therefore the duty of the last agency authorized by law to transport such shipments—the agency which delivered them to the purchaser or permittee—to perform these acts. There was no more duty or obligation resting upon the railroad company which brought the shipments to Seattle to deface the permits upon delivery to the Transfer Company than there was upon the Steamship Company which originated the shipments when it delivered them to the Railroad Company.

The opinion of the Circuit Court of Appeals does not indicate what considerations led it to the conclusion that the shipments could not lawfully

have been delivered to the American Transfer Company. The court simply said that "In the instant case the carrier could not lawfully make delivery of either of the two carloads of beer shipped to the consignee named in the respective bills of lading—the Transfer Company—by reason of the prohibitive provisions of the statutes of the State of Washington * * * " This statement assumes the very point to be decided.

The court then says in effect that since delivery could not lawfully have been made to the Transfer Company, to have done so would therefore have been a crime not only under the statute of the state, but under Section 240 of the Federal Criminal Code (quoted in the opinion) as well.

We believe that what we have already said clearly establishes the proposition that the court was wrong in assuming or deciding that the shipments could not lawfully have been delivered to the American Transfer Company. If that is correct, then the conclusion of the court with regard to Section 240 does not follow according to its own reasoning, but aside from this, this section has absolutely no application to the shipments in question because of the Webb-Kenyon law, which takes from shipments of this kind their characteristic as interstate commerce when state laws are enacted upon the subject.

Clark Distilling Co. vs. Western Md. Ry. Co., 242 U. S. 311.

Section 240 provides a penalty for a person to ship packages containing intoxicating liquor in in-

terstate commerce without labeling them so as to show the name of the consignee. It is expressly stipulated that the packages were marked so as to conform with this section. It has absolutely no bearing upon the question of transportation of packages whether singly or in the aggregate, much less upon the question whether carload or less-than-carload rates shall be charged. It is a criminal statute and a prohibition upon acts of the shipper and not of the carrier. In case of a violation the shipper is fined not by being required to pay higher freight rates, but by the imposition of the penalty provided. To violate this section is an offense against the government and the mistake of regarding it as having any bearing upon the question here involved is manifest when it is pointed out that, if it would have been violated by delivering the carloads in question to the consignees named in the bills of lading, it was equally violated by making delivery in any other manner whatsoever. What, then, has this section to do with the question of whether the carriers are entitled to charge carload or less-than-carload rates?

That there is nothing illegal in making shipments under the arrangements existing in this case and that delivery could lawfully have been made to the consignee named in the bills of lading has been held in *U. S. vs. 87 Barrels, etc., of Wine*, 180 Fed. 215, which is referred to by the Circuit Court of Appeals in its opinion.

In that case, as in the present case, numerous barrels and kegs were shipped in several carloads

from San Francisco to Vermont in order to take advantage of carload rates. The individual packages were intended for numerous persons at the point of destination, but each car was consigned to one person or company as consignee. The question was whether under Section 240, which requires that the package be so labeled on the outside cover as to plainly show the name of the consignee, the person or company to whom they were consigned or the purchasers for whom they were ultimately intended and to whom they were to be delivered at destination was the consignee within the meaning of the statute. The court held that "consignee" as used in the statute means the person or corporation "to whom the carrier may lawfully make delivery of the consigned goods *in accordance with its contract of carriage,*" and that delivery of the shipments in bulk to the person named in the bill of lading was therefore legal.

In discussing the question as to whether under these sections the carrier could deliver the bulk shipments to the consignees named instead of to the persons to whom the packages were ultimately to be delivered, the court said:

> "There being nothing in the act prohibiting bulk shipments, and nothing requiring liquors to be always delivered to the owner or purchaser or consumer (as such), it seems to me that this record was perfect and that not only was the letter but the spirit of the legislation lived up to. * * * "

The case referred to therefore sustains the contention of the Brewing Company in the present case. It clearly holds that under laws such as we are considering it is the right and duty of a carrier to deliver the shipments in carload lots to the consignee *in accordance with its contract of carriage,* and not to the individual purchasers or permittees.

It seems to us there can be no doubt that the method of transportation and delivery which the bills of lading in this case provided for was entirely within the law. The law in question was not an absolute prohibition law. It placed limitations upon the manufacture and sale of intoxicating liquor in the state, but specifically provided a way in which it could be secured by those desiring it. In other words, it was the policy of the state at that time to permit and enable a person to obtain beer in the manner provided by the statute, and the law undoubtedly contemplated the arrangement under which these shipments were transported, or it would not have been so specific as to the agencies which were authorized to transport intoxicating liquor.

Why, then, should the Steamship Company and the rail carriers now be permitted to recover the exorbitant charges based upon a high minimum per package simply because they refused to recognize that the Transfer Company is entitled to receive the same consideration under the law as they do?

We submit that the trial court was right in dismissing the action in the first instance and that the

decision of the Circuit Court of Appeals should now be reversed and the action dismissed.

Respectfully submitted,

S. J. WETTRICK,
Attorney for Plaintiff in Error.

Seattle, Washington,
January 5, 1922.

In the

Supreme Court of the United States

~~No. 820, October Term, 1920~~

No. 267, October Term, 1921

RAINIER BREWING COMPANY
Plaintiff in Error

v.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY
Defendant in Error

In Error to the United States Circuit Court of Appeals for the Ninth Circuit

BRIEF FOR DEFENDANT IN ERROR

S. J. WETTRICK
Arctic Building, Seattle, Washington
Attorney for Plaintiff in Error

CHARLES H. CAREY, JAMES B. KERR
CHARLES A. HART
Yeon Building, Portland, Oregon
Attorneys for Defendant in Error

SUBJECT INDEX.

LIST OF CASES CITED.

In the

Supreme Court of the United States

No. 820, October Term, 1920
No. 267, October Term, 1921

RAINIER BREWING COMPANY
Plaintiff in Error

v.

GREAT NORTHERN PACIFIC STEAMSHIP COMPANY
Defendant in Error

In Error to the United States Circuit Court of Appeals for the Ninth Circuit

BRIEF FOR DEFENDANT IN ERROR

STATEMENT OF THE CASE.

The dispute in this case is over the meaning of the prohibition law of the State of Washington in effect in 1917.

The District Court had jurisdiction because the case arose under the Act to Regulate Commerce; and since the matter in controversy exceeds one thousand dollars, the jurisdiction of

this court upon writ of error to the Court of Appeals is unquestioned.

The Brewing Company was the shipper and the Steamship Company (with its rail connections) the carrier of two consignments of beer from San Francisco to Seattle in May, 1917. Washington then permitted individuals to import a limited amount of liquor every twenty days; and the statute provided for securing permits from County Auditors which authorized carriers to transport and the permittees to receive the quantity allowed by law. Remington's 1915 Codes, Sections 6262-1 to 6262-33, inclusive. The Brewing Company sought to make bulk shipments of a considerable number of these individual purchases in order to take advantage of the carriers' carload rates. It offered to the Steamship Company at San Francisco two carloads of beer, consigned to the American Transfer Company, a drayage concern at Seattle. The carload shipments were made up of individual packages each containing no more than the quantity allowed to be imported by an individual and each having affixed the permit authorizing the importation. The intent was to have the Transfer Company at Seattle distribute the packages and assume the responsibility of placing each individual shipment in the hands of the permittee.

The Steamship Company took the two consignments as billed and collected carload rates. However, when the beer reached Portland, the rail line which was to take it to Seattle determined that the beer could not lawfully be transported into Washington in carload lots and delivered to a drayage company. The two carload shipments were thereupon broken up into individual consignments and each package was handled to destination as a less than carload shipment and by the rail line delivered directly to the person named in the permit affixed to the package.

The Steamship Company then called upon the Brewing Company to pay the difference between the carload rate, already paid, of $425.57 and the less than carload rate of $1,927.27.

The District Court first accepted the contention of the Brewing Company that the Washington statute did not forbid bulk shipments of liquor, and a motion to dismiss was granted. The Court of Appeals thought otherwise and the judgment of dismissal was reversed (*Great Northern Pacific Steamship Company v. Rainier Brewing Company,* 255 Fed. 762). An attempt to bring the case to this court was ineffectual because there was no final judgment. (*Rainier Brewing Co. v. Great*

Northern Pacific Steamship Co., 250 U. S. 652.) Thereafter the case went to trial in the District Court, which rendered judgment for the Steamship Company for $1,501.70. Upon writ of error, the Court of Appeals adhered to its former construction of the Washington law, and sustained the judgment. (*Rainier Brewing Co. v. Great Northern Pacific Steamship Co.*, 270 Fed. 94.) The writ of error to this court followed.

ARGUMENT.

The single question in this case is whether or not the Brewing Company's shipments of beer could lawfully have been transported into Washington as carload shipments and delivered by the carriers to a transfer company. If notwithstanding the requirements of the state and federal statutes then effective the beer could have been handled to destination and delivered as planned at the time of shipment, obviously the carriers may not now recover additional charges even though they have performed the additional services consequent upon the handling of the packages in less than carload lots. If, on the contrary, the carriers could lawfully handle the shipments only by assuming responsibility for the transportation and delivery to the individual permittees (the ultimate consignees under the Washington statute) of their respective packages, then there was collectible from these consignees or from the shipper (the Brewing Company) the tariff charges applicable to the character of transportation furnished.

The Steamship Company and its rail connections could make but one contract for this transportation. Under the Webb-Kenyon law (37 Stats. 699, Sec. 8739, U. S. Compiled Stats., 1918), the carriers could bring this beer into

the State of Washington only in the manner allowed by the Washington law. *State v. Great Northern Railway Co.,* 165 Pac. 1073; *Clark Distilling Co. v. Western Maryland Railway Co.,* 242 U. S. 311. If the transportation service could lawfully be performed only by carrying and delivering to the individual permittee his package of liquor, the acceptance of the shipments by the Steamship Company imposed this obligation upon the carriers regardless of the express undertaking with shipper. And in these circumstances, there would be collectible the charges fixed by the applicable tariffs for such transportation service. *Texas & Pacific Co. v. Mugg,* 202 U. S. 242.

The Steamship Company at San Francisco accepted the beer from the Brewing Company billed as two carload shipments. When the rail carriers took the shipments from the Steamship Company for transportation into Washington, and the question of carload or less than carload handling became of importance, the rail carriers were forced to determine in what manner the shipping contract could be performed without violation of law; how the beer could be transported to its destination at Seattle and delivered in conformity with the restrictions imposed upon the carriers by state and federal law. Their conclusion was that

they could lawfully handle the beer only in the manner prescribed for the importation of individual packages under the permit system of the Washington prohibition law. This meant that the carriers were required to examine each package to see that it conformed to the requirements of the law, to cancel the permit on each package before the package left the carriers' possession, and finally to deliver the package only to the permittee named. To accomplish this the two consignments of beer were rebilled into 2565 less than carload shipments, and the rail carriers thereupon transported the packages to Seattle and made delivery in each case to the permittee or upon his order. If they were correct in their interpretation of the Washington statute, it follows that the less than carload rates are collectible and the judgment should be sustained.

The applicable provisions of the Washington prohibition law are found in Sections 6262-15 to 6262-20, inclusive, Remington's 1915 Codes and Statutes. They provided a plan for the shipment into the state by individuals of a limited quantity of liquor every twenty days. Section 6262-15 provided that "any person" desiring to ship or transport any intoxicating liquor should personally appear before the county auditor and make a sworn statement

showing, among other things, his name, that he was over 21 years of age, and the name and address of the person, firm or corporation from whom the shipment was to be made. Upon this statement the county auditor was authorized to issue a permit to the individual to "ship or transport" the limited quantity of liquor, and the permit so issued authorized the permittee to transport the liquor, or if he desired to ship it, authorized the carrier with which he might make shipping arrangements to handle it for him. The authority given the carrier by this action and by Section 6262-18 was specific. When the applicant got his permit and affixed it to the package, the carrier was allowed to transport it, *providing* it contained no more than one-half gallon of liquor other than beer, or twelve quarts or twenty-four pints of beer. Before completing the transportation and delivering the package of liquor the carrier was required to cancel the permit and deface it so that it could not be used again; and it was made unlawful for the carrier to transport or carry any intoxicating liquor except as authorized by the permit, or to carry for any one under the authority of a permit more liquor than the limit provided by statute.

Section 6262-18 prohibited carriers from bringing liquor into the state except in pack-

ages having affixed and prominently displayed the permits issued by the county auditor; and forbade carriers to deliver or consignees to receive packages unless they had the requisite permit properly attached and cancelled. Section 6262-20 contained the added requirement that carriers must not transport the liquor within the state unless the packages were clearly and plainly marked with the words, "This Package Contains Intoxicating Liquor."

Statutes imposing restrictions on carriers in the handling of intoxicating liquors almost universally require more than that they shall knowingly refrain from aiding in law violations. The manifest difficulty of enforcing prohibition laws without active co-operation by the carriers is held to justify regulations which amount practically to a policing of shipments by the transportation companies. *Commonwealth v. Mixer,* 207 Mass. 141, 93 N. E. 249.

This clearly was the intent of the Washington prohibition statute. In the same section of the law (6262-15), granting to the individual a limited right to bring in intoxicating liquor is found the authority given the carrier to transport the liquor; and under that authority the carrier could transport the liquor covered by the permit and no more. Before completing the transportation and making de-

livery of the package to the individual entitled to it, the carrier was charged with the duty of cancelling and defacing the permit affixed to the package. The carriers were expressly forbidden (Section 6262-18), to bring any liquor into the state except that permitted by the policing regulations referred to; and it was a violation of the law for a carrier to turn over any of these package shipments to the persons entitled without the cancellation and defacement of the permit.

The effect of these regulations was to require of the carrier active aid, not only in keeping out unauthorized shipments of liquor, but in preventing the individual from securing more than the amount allowed or from importing it more frequently than was permitted by the statute. The carrier must assume responsibility for the transportation *and delivery* of each and every package of liquor shipped; when the individual exercised the statutory permission to bring in liquor, the carrier who was authorized to transport it for him first had to make certain that the permittee had secured the right to ship, and second, that not more than the limited quantity was included in the package, and finally that the permit was cancelled before the consignee was allowed to receive his shipment.

The duty thus imposed upon the carriers of policing individual shipments is wholly inconsistent with the right to transport in bulk or carload shipments contended for by the Brewing Company in this case. The Brewing Company asked of the carriers that they take into Washington two carloads of beer (made up, it is true, of individual packages, each with its permit affixed), and to make delivery not of the packages to the individual permittees whose authority to ship contained the carrier's only authority to transport, but of the carloads of beer to a transfer company.

The purpose of the statute was to prevent all importation of liquor except by individuals under special license issued by county auditors, and to forbid all transportation of liquor except that carried for these individuals under the permits secured by them; and the carriers were called on to see that these individuals did not take delivery of their shipments until certain prerequisites had been complied with. The Transfer Company—the named consignee of the Brewing Company's carload shipments—could not import any liquor. It could not qualify as the permittee to whom, after cancellation of the permit affixed to the package, the carrier was authorized to make delivery. Clearly the framers of the statute intended that the car-

riers whose right to transport liquor was so carefully limited should be responsible for the packages from the time they entered the state until they were delivered; that is, until they were placed in the possession of the person entitled by law to receive them and for whom the carrier was allowed to handle them.

The law forbade the delivery by the carrier of the "limited quantity" shipments until the carrier had cancelled and defaced the permits; and when the purpose of the statute is kept in mind, it is apparent that the delivery contemplated to be made by the carrier was to the individual who had secured the statutory permission to bring in the liquor. The sections of the statute referred to dealt with the right of individuals to import liquor, and the right to transport and deliver granted to the carriers pertained to these same individual shipments. The carrier's responsibility was to see that certain regulations were obeyed before it could turn over to the individual his shipment of liquor; and the purpose of the act in placing this obligation upon the carrier makes it certain that its deliveries of liquor could be to no other persons than the individuals upon the strength of whose permits the transportation was undertaken.

While the language of the statute is not specific, its provisions taken as a whole indi-

cate beyond question that carriers were to assume responsibility for the transportation *and delivery* of the shipments in accordance with the restrictions imposed; and the "delivery" referred to must be interpreted as meaning the taking of possession by the individual permittee.

Any other construction of the statute would render it, so far as the transportation restrictions are concerned, wholly ineffective. Transfer companies, distributing agents and the like were not named in the statute as authorized to handle liquor shipments, nor were any limitations with respect to delivery imposed upon them. If the carrier had no responsibility other than to see to the cancellation of the permit after the transportation had been begun, and if a delivery to the Transfer Company or distributing agent—after the cancellation of the permit—would have been a full compliance with its duty, supervision of the shipments would have ended with that delivery and the Transfer Company or distributing agent would have been free to dispose of the shipments to the permittees, their assignees, or to any one else claiming to be entitled to possession.

Under this interpretation of the law a liquor dealer outside the state could readily have established within the state a distributing

depot or agency in charge of an agent whose activities would only have been limited by the number of permits he might be able to secure; and the state would be powerless to check the traffic or take any steps to see that the package shipments reached only the individuals to whom the permits had been issued.

No specific provision of the statute is directed toward such a practice, because the only transportation which the carriers were allowed to undertake was of the shipment of the individual securing the permit; and before the carrier could deliver it over and before the individual could take it, the carrier had to cancel the permit. This limitation upon the right to transport and the requirement with respect to delivery, make it clear that the carrier was compelled to handle each package shipment separately as the shipment of the permittee and was required to assume responsibility for its delivery, with the permit cancelled and defaced, to the permittee.

The policing regulations of the statute, apart from the question of delivery, are inconsistent with the idea of carload or bulk transportation. Carload shipments ordinarily move under seal from the warehouse of the shipper to the industry track of the consignee. The carrier is not concerned with the contents

of the cars except in so far as inspection for rate classification may be necessary; and the great disparity between the carload and less than carload transportation charge presupposes no other service in respect of carload shipments than the hauling of a car loaded by the shipper from his industry to the plant of the consignee at destination where the car is unloaded by the consignee.

Section 238 of the Criminal Code of the United States (35 Stats. 1136, Sec. 10408 Comp. Stats. 1916), is as follows:

> "Any officer, agent, or employe of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the *bona fide* consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind which has been shipped from one state, territory, or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other state, territory, or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory, or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, shall be fined not more than

five thousand dollars, or imprisoned not more than two years, or both."

Under this statute liquor shipments may not be delivered to any one but the consignees, or to persons presenting written orders from the consignees; and the "consignees" have been defined (*U. S. v. Eighty-seven Barrels, etc., of Wine,* 180 Fed. 215), as meaning those persons or corporations to whom the carrier may lawfully make delivery of the consigned goods.

Applying this statute in conjunction with the Washington statute, there results a positive inhibition against the delivery by the carrier of the individual liquor shipment to any one other than the person named in the permit. Notwithstanding the naming of a transfer company as consignee, the individual permittee was the only one authorized by the Washington law to ship the liquor and to take delivery after the cancellation of the permit. In the language of the decision last cited, he was the one "to whom the carrier might lawfully make delivery of the consigned goods"; and the provision of the Criminal Code referred to made it a federal offense to deliver the liquor to any one else.

The Brewing Company argues that the Transfer Company, the named consignee of the carload shipments, was a carrier within the

meaning of the Washington statute. It is said that the rail lines would have discharged their obligations by delivering the carload shipments intact to the Transfer Company, because they knew that the Transfer Company in effecting delivery in some, if not in all cases, would provide further transportation service.

It should be a sufficient answer to this argument that the Transfer Company did not sustain the relation of a carrier to these shipments. It was the consignee and under some arrangement with the Brewing Company, it was to act as a distributing agent in placing the packages in the hands of the individual permittees. Whether in some instances it could qualify as a carrier under the Washington statute, certainly it was not one of the transportation agencies employed in the service undertaken by the Steamship Company. When the shipments were accepted for transportation, the Steamship Company and its rail connections assumed certain obligations under the Washington law: They were bound to see that each package had its permit affixed authorizing the transportation and they were not allowed to make delivery without defacing and cancelling the permit. The provision of the statute concerning delivery, of course referred to delivery to the permittee; and the obligation

to cancel the permit was imposed upon the carriers undertaking the transportation.

The Steamship Company and its rail connections (Spokane, Portland and Seattle Railway Company and Northern Pacific Railway Company), were the carriers which assumed this obligation. They could not escape it by turning over the bulk shipments to the Transfer Company upon its promise that before delivery of the individual packages, it would see to the cancellation of each permit. If each package of liquor had been consigned directly to its owner and the Transfer Company named as the delivering carrier, it may be that the rail lines bringing the shipments into the state could have turned them over to the Transfer Company, leaving to it the responsibility of cancelling the permits before making delivery. But the transportation service asked of the Steamship Company and its rail connections was of two carload shipments of liquor consigned to a drayage company in Seattle; and it is said the two requirements of the law would be satisfied because (1) the Northern Pacific Company before transporting the liquor *in Washington* could go through each car and examine the twenty-five hundred packages and their permits, and (2) the responsibility incident to delivery to the permittees could be left to the drayage company on

the assumption that the permittees would not call for their packages but would require delivery service.

Obviously, carriers undertaking the transportation of liquor under this statute could not thus have evaded their responsibilities. The law allowed bringing in liquor only at the instance of individuals who had secured permits for the transportation. To police this regulation the carriers were required to examine the permits attached to each shipment, and delivery was forbidden until the permit was cancelled. This authorized no intermediary between the shipper and the ultimate consignee—the one who had secured the right to have the liquor transported. And particularly is this true where the plan contemplated wholesale shipments under transportation conditions inconsistent with the duty imposed upon the carriers in respect of the individual packages handled.

We submit that the carriers were right in deciding that they could lawfully handle the Brewing Company's shipments only as less than carload traffic.

CHARLES H. CAREY,
JAMES B. KERR,
CHARLES A. HART,
Attorneys for Defendant in Error.